MONTANA WETLANDS LEGACY PROJECTS
CONTRACT NUMBER: SPB04-878P-G

1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana Department of Administration, State Procurement Bureau (hereinafter referred to as "the State"), whose address and phone number are Room 165 Mitchell Building, 125 North Roberts St., PO Box 200135, Helena MT 59620-0135, (406) 444-2575 and **Tetra Tech Inc.**, (hereinafter referred to as the "Contractor"), whose nine digit Federal ID Number, address and phone number are 95-4148514, 303 Irene Street, PO Box 4699, Helena MT 59604, and (406) 443-5210.

THE PARTIES AGREE AS FOLLOWS:

2. EFFECTIVE DATE, DURATION, AND RENEWAL

2.1 Contract Term. This contract shall take effect upon full execution of all signatory parties, and terminate on June 30, 2008, unless terminated earlier in accordance with the terms of this contract. (Mont. Code Ann. § 18-4-313.)

2.2 Contract Renewal. This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in one-year intervals, or any interval that is advantageous to the State, for a period not to exceed a total of three additional years. This renewal is dependent upon legislative appropriations.

3. NON-EXCLUSIVE CONTRACT

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

4. COOPERATIVE PURCHASING

Under Montana law, public procurement units, as defined in section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units.

5. SERVICES AND/OR SUPPLIES

Contractor agrees to provide the State with an expedited means of hiring qualified contractors to provide Wetland, Stream, and other Aquatic Resource restoration, enhancement, and development design and implementation for various projects around the State of Montana. This contract will be utilized primarily by FWP but other state agencies or public procurement units may utilize this contract in conjunction with wetland, stream, and other aquatic resource restoration, enhancement and development projects.

The Contractor may need to have access to engineering services depending on the nature of the project. The Contractor will be expected to use their own best judgment as to whether engineering services are needed for a given project. However, traditional engineering methodologies are not the emphasis of this contract. It is a violation of State Statute to practice engineering or land surveying without a license.

5.1 Design Expectations. FWP prefers stream restoration improvement techniques that simulate natural conditions and facilitate natural stream processes. The State is always open to new and innovative

approaches that accomplish project goals providing these techniques have proven success.

5.2 Contractor Responsibilities. The selected contractor for an individual project is responsible for the supervision and implementation of the designs and is responsible for oversight of work performed by all subcontractors. In most cases the contractor will provide and be responsible for all the necessary equipment, materials, supplies and personnel necessary for proper execution of the work. However, the State reserves the right to hire subcontractors (equipment and/or labor) if it will provide a cost savings to the State. The selected contractor is also responsible for clean up of the sites and must have the sites inspected by the State immediately prior to completion.

5.3 Permits. The Contractor is responsible for obtaining all necessary permits for each project, including but not limited to 404 permits, 310 (streambank preservation) permits, other permits, SHPO clearance, and water rights.

5.4 On-Site Requirements/Cleanup. When a contractor is contacted by the State to discuss a project, the State and the contractor will visit the job site to become familiar with conditions relating to the project and labor requirements. The State and chosen contractor will then cooperatively develop project feasibility, conceptual design and cost.

The Contractor shall adequately protect the work, adjacent property, and the public in all phases of the work. The Contractor shall be responsible for all damages or injury due to their action or neglect.

The Contractor shall maintain access to all phases of the project pending inspection by the State or its representative.

All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance.

The Contractor shall respond within seven calendar days after notice of observed defects has been given and shall proceed to immediately remedy these defects. Should the Contractor fail to respond to the notice or not remedy the defects, the State may have the work corrected at the expense of the Contractor.

In terms of cleanup, the Contractor shall:

(a) Keep the premises free from debris and accumulation of waste;
(b) Clean up any oil or fuel spills;
(c) Keep machinery clean and free of weeds;
(d) Remove all construction smears and stains from finished surfaces;
(e) Perform finishing site preparation to: (1) limit the spread of noxious weeds, and (2) smooth exposed ground surface to enhance aesthetics, provide sire-footing, and provide uniform bed for future revegetation work before final payment by the State;
(f) Remove all construction equipment, tools and excess materials before final payment by the State; and
(g) Install silt fences as necessary, prevent fall-back of excavated materials, and prevent any other potential violations of federal or state water protection laws during the period of construction.

5.5 Work Acceptance. The Contractor is responsible for project oversight as needed. The State may also periodically provide personnel for administrative oversight from the initiation of the contract through project completion. All work will be inspected by the State or designated liaison prior to approval of any contract payments. All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance. Contractor shall respond within seven calendar days after notice of defects has been given by the State and proceed to immediately remedy all defects.

5.6 Records. The Contractor will supply the State with photo documentation of methods of habitat restoration progress throughout project implementation. Contractor will maintain records for themselves and all subcontractors of supplies, materials, equipment and labor hours expended.

5.7 Communication. During a project the chosen contractor is required to make weekly contact with the State liaison, or other parties designated by the State for communications, to make arrangements for field inspections and project compliance. This communication must be made in person or by telephone conversation with designated liaisons. Voice mail recordings will not be considered communication unless approved by the State's project contact.

Remoteness of project sites may necessitate that the Contractor have some form of field communication such as a cellular phone. This communication is necessary to enable the State to respond to public concerns related to the project, accidents, inspections, or other project issues that require immediate feedback. Weekly communication will commence when the chosen contractor initiates project implementation.

5.8 Project Monitoring and Reports to the Corps of Engineers. The Contractor is responsible for monitoring their projects and reporting to the Corps of Engineers about the development of wetland and stream function resulting from the project. In this way, the Corps will know whether wetland credit for the project has been earned.

5.9 Change Of Staffing. Since qualifications of personnel were key in determining which offeror's were selected to be on this term contract, a written notification to the State Agency requesting services of any contractor changes of key personnel must be made prior to entering into negotiations to perform any specific work scope. Contractor shall replace such employee(s) at its own expense with an employee of substantially equal abilities and qualifications without additional cost to the Agency. If these staffing changes cause the contractor to no longer meet the qualifications stated herein, that firm will be removed from the service area of this term contract. Failure to notify the State Agency of staffing changes could result in the contractor being removed from the term contract listing and possible suspension from bidding on other State projects.

5.10 Collaboration on Potential Projects. The State encourages collaboration between Contractors to increase the scope and effectiveness of services offered. All subcontractors to be used in any project must be approved by FWP or the authorized entity initiating the project.

6. PROJECT SELECTION

The State will be responsible for identifying projects, contacting landowners and securing necessary permission/cooperation agreements, selecting a contractor, writing grant applications and approving project payments.

The State will not initiate projects where it is known that hazardous materials are present. If there is an indication of a potential of hazardous materials, then the State will do testing prior to contacting the Contractor. However, there is always the possibility of unforeseen problems resulting in the stoppage of a project.

The selected contractor will be required to meet with State personnel at the project site to conduct a site evaluation, discuss project issues and begin the negotiation process on project feasibility, conceptual design and costs for each project.

7. CONTRACTOR SELECTION

The State may select a term contract holder from the Environmental Services Contract-Home page under MT Wetlands Legacy Projects as provided under the state's website address http://www.discoveringmontana.com/doa/gsd/procurement/TermContracts/environservices/Default.asp , taking into consideration such things as the contractor's expertise, requirements and location of the project, the contractor's availability and access to resources necessary to efficiently and effectively complete the project, demonstrated excellent past performance on State and public projects, identified subcontractors and total project cost**.**

7.1 General. Ordering agencies shall use the procedures in this section when ordering services priced at hourly rates as established by each Term Contract (TC).

7.2 Request for Quotation (RFQ) procedures. The ordering agency must provide an RFQ, which includes the statement of work and limited but specific evaluation criteria (*e.g.*, experience and past performance), to all TC contractors. The RFQ may be posted to the agency's state website to expedite responses.

7.3 Statement of Work (SOW's). All SOW's shall include at a minimum a detailed description of the work to be performed; location of work; period of performance; deliverable schedule; applicable performance standards; and any special requirements (*e.g.*, security clearances, travel, special knowledge).

(1) Ordering agency may select a contractor from the appropriate list and directly negotiate a mutually acceptable project based on a sudden and unexpected happening or unforeseen occurrence or condition, which requires immediate action (Exigency).

(2) Ordering agency may place orders at, or below the $5,000 threshold with any term contract contractor that can meet the agency's needs. The ordering agency should attempt to distribute orders among all contractors.

(3) For orders estimated to exceed $5,000 but less than $25,000.

(i) The ordering agency shall develop a statement of work.
(ii) The ordering agency shall provide the RFQ (including the statement of work and evaluation criteria) to at least three TC contractors.
(iii) The ordering agency shall request that contractors submit firm-fixed prices to perform the services identified in the statement of work.

(4) For orders estimated to exceed $25,000. In addition to meeting the requirements of 3 above, the ordering agency shall:

(i) Provide the RFQ (including the statement of work and the evaluation criteria) to all TC contractors.

7.4 Evaluation. The ordering agency shall evaluate all responses received using the evaluation criteria provided in the RFQ to each TC contractor. The ordering agency is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable. The agency will place the order with the contractor that represents the best value. After award, ordering agencies will provide timely notification to unsuccessful TC contractors. If an unsuccessful TC contractor requests information on a task order award that was based on factors other than price alone, a brief explanation of the basis for the award decision shall be provided.

7.5 Minimum documentation. The ordering agency shall document:
(1) The TC contractors considered, noting the contractor from which the service was purchased;
(2) A description of the service purchased;
(3) The amount paid;
(4) The evaluation methodology used in selecting the contractor to receive the order;
(5) The rationale for making the selection;
(6) Determination of price fair and reasonableness.

Agency project task orders will be utilized to finalize the project. Only written addenda will be used for adjustments of the task orders and must be signed by both parties. All task orders must contain signatures from both parties and appropriate agency legal review as directed in their procurement policy.

The State will monitor contractor selection by using the information provided in the annual term contract usage reports.

Contractor's who fail to respond to three (3) RFQ opportunities within a one-year period between July 1st and June 30th, may be removed from the qualified list of contractors.

8. CONSIDERATION/PAYMENT

8.1 Payment Schedule. In consideration for the Montana Wetlands Legacy projects to be provided, the State shall pay according to the prices listed in Attachment B. Project budgets will be negotiated for each individual project. However, all rates, terms and conditions set forth in this term contract will be applied to individual contracts.

8.2 Invoicing Methods. The State reserves the right to choose the invoicing method from the following: (1) Prime contractor's billing will include the subcontractors charges and payment will be made to the prime; or (2) Prime and subcontractors will bill the State separately and the State will pay each directly.

8.3 Withholding of Payment. The State may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

9. COST/PRICE ADJUSTMENTS

9.1 Price Increases Negotiated Based on Increases in Contractor's Costs. Price increases may be permitted at the time of contract renewal through a process of negotiation with the Contractor and the State. Any price increases must be based on demonstrated industry-wide or regional increases in the Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

Contractor must provide written, verifiable justification for any cost adjustments they request during each renewal period. Contractor shall provide its cost adjustments in both written and electronic format.

10. TERM CONTRACT REPORTING

Term contract holder(s) shall furnish annual reports of term contract usage. Each report shall contain the project description, total dollars expended, and the name of the agency purchasing the services. The first report for this term contract will be due July 16, 2005.

Reported volumes and dollar totals may be checked by the State Procurement Bureau against State records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State.

11. CONTRACTOR REGISTRATION

The Contractor is required to be registered with the Department of Labor and Industry under sections 39-9-201 and 39-9-204, MCA, *prior* to contract execution. The State cannot execute a contract for construction to a Contractor who is not registered and may award the contract to the next responsive vendor if registration is not completed in a timely manner. (Mont. Code Ann. § 39-9-401.)

Contractor Registration Number: 149515

12. CONTRACTOR WITHHOLDING

Section 15-50-206, MCA, requires the state agency or department for whom a public works construction contract over $5,000 is being performed, to withhold 1 percent of all payments and to transmit such monies to the Department of Revenue.

13. MONTANA PREVAILING WAGE REQUIREMENTS

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of $25,000 for construction or nonconstruction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative

rules adopted pursuant thereto. Unless superseded by federal law, at least 50% of the workers of each contractor engaged in construction services must be performed by bona fide Montana residents. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of $25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

The nature of the work performed or services provided under this contract meets the statutory definition of a "public works contract" under section 18-2-401(11)(a), MCA, and falls under the category of Heavy Construction and Nonconstruction services. The booklets containing Montana's 2003 Rates for Heavy Construction and Nonconstruction Services are attached.

The most current Montana Prevailing Wage Booklet will automatically be incorporated at time of renewal. It is the contractor's responsibility to ensure they are using the most current prevailing wages during performance of its covered work.

14. ACCESS AND RETENTION OF RECORDS

14.1 Access to Records. The Contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

14.2 Retention Period. The Contractor agrees to create and retain records supporting the Montana Wetlands Legacy projects for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

15. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The Contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.) The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationships exist between any subcontractor and the State.

16. HOLD HARMLESS/INDEMNIFICATION

The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims,

demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

17. REQUIRED INSURANCE

17.1 General Requirements. The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

17.2 Primary Insurance. The Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

17.3 Specific Requirements for Commercial General Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of $1,000,000 per occurrence and $2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

17.4 Additional Insured Status. The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

17.5 Specific Requirements for Automobile Liability. The Contractor shall purchase and maintain coverage with split limits of $500,000 per person (personal injury), $1,000,000 per accident occurrence (personal injury), and $100,000 per accident occurrence (property damage), OR combined single limits of $1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

17.6 Additional Insured Status. The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, hired, or borrowed by the Contractor.

17.7 Specific Requirements for Professional Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of $1,000,000 per occurrence and $2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

17.8 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, and volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

17.9 Certificate of Insurance/Endorsements. A certificate of insurance from insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by the State

Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

18. COMPLIANCE WITH THE WORKERS' COMPENSATION ACT

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the State Procurement Bureau, upon expiration.

19. COMPLIANCE WITH LAWS

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

20. INTELLECTUAL PROPERTY

All patent and other legal rights in or to inventions created in whole or in part under this contract must be available to the State for royalty-free and nonexclusive licensing. Both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract.

21. PATENT AND COPYRIGHT PROTECTION

21.1 Third Party Claim. In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor will indemnify the State against all costs, damages and attorney's fees that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

21.2 Product Subject of Claim. If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine if the Contract has been breached.

22. CONTRACT TERMINATION

22.1 Termination for Cause with Notice to Cure Requirement. The State may terminate this contract for failure of the Contractor to perform any of the services, duties, or conditions contained in this contract after giving the Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

22.2 Reduction of Funding. The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)

23. STATE PERSONNEL

All project management and coordination on behalf of the State shall be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this contract shall be coordinated between the State's liaison and the Contractor's liaison.

23.1 State Contract Manager. The State Contract Manager identified below will be the single point of contact for the coordination of all contract issues under this contract. The State Contract Manager will meet with the Contractor Contract Manager and/or others necessary to resolve any conflicts, disagreements, or other contract issues.

The State Contract Manager for this contract is:

Robert Oliver, Contracts Officer
State Procurement Bureau
Room 165, Mitchell Building
125 North Roberts
PO Box 200135
Helena MT 59620-0135
Telephone #: (406) 444-0110
Fax #: (406) 444-2529
E-mail: ROliver@mt.gov

23.2 State Project Manager. The State Project Manager identified below will manage the day-to-day project activities on behalf of the State.

The State Project Manager for this contract is:

Tom Hinz, Coordinator
Montana Wetlands Legacy
1400 South Nineteenth
Bozeman MT 59718
Telephone #: (406) 994-7889
Fax #: (406) 994-4090
E-mail: thinz@montana.edu

24. CONTRACTOR PERSONNEL

24.1 Identification/Substitution of Personnel. The personnel identified or described in the Contractor's proposal shall perform the services provided for the State under this contract. Contractor agrees that any personnel substituted during the term of the contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The State reserves the right to approve Contractor personnel assigned to work under the contract, and any changes or substitutions to such personnel. The State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve the Contractor to perform and be responsible for its obligations under this Contract. The State reserves the right to require Contractor personnel replacement. In the event that Contractor personnel become unavailable, it will be the Contractor's responsibility to provide an equally qualified replacement in time to avoid delays to the work plan.

24.2 Contractor Contract Manager. The Contractor Contract Manager identified below will be the single point of contact to the State Contract Manager and will assume responsibility for the coordination of all contract issues under this contract. The Contractor Contract Manager will meet with the State Contract Manager and/or others necessary to resolve any conflicts, disagreements, or other contract issues.

The Contractor Contract Manager for this contract is:

Gary Fischer
303 Irene Street
PO Box 4699
Helena MT 59604
Telephone #: (406) 443-5210
Fax #: (406) 443-3729
E-mail: gfischer@maximusa.com

24.3 Contractor Project Manager. The Contractor Project Manager identified below will manage the day-to-day project activities on behalf of the Contractor:

The Contractor Project Manager for this contract is:

Gary Fischer
303 Irene Street
PO Box 4699
Helena MT 59604
Telephone #: (406) 443-5210
Fax #: (406) 443-3729
E-mail: gfischer@maximusa.com

25. MEETINGS

The Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. Meetings will occur as problems arise and will be coordinated by the State. The Contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings two consecutive missed or rescheduled meetings, or to make a good faith effort to resolve problems, may result in termination of the contract.

26. CONTRACTOR PERFORMANCE ASSESSMENTS

The State may do assessments of the Contractor's performance. This contract may be terminated for one or more poor performance assessments. Contractors will have the opportunity to respond to poor performance assessments. The State will make any final decision to terminate this contract based on the assessment and any related information, the Contractor's response and the severity of any negative performance assessment. The Contractor will be notified with a justification of contract termination. Performance assessments may be considered in future solicitations.

27. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, the Contractor must provide for a reasonable period of time after the expiration or termination of this project or contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost

of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

28. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

29. SCOPE, AMENDMENT AND INTERPRETATION

29.1 Contract. This contract consists of 11 numbered pages, any Attachments as required, RFP #SPB04-878P**,** as amended and the Contractor's RFP response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

29.2 Entire Agreement. These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

30. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

DEPARTMENT OF ADMINISTRATION
STATE PROCUREMENT BUREAU
PO BOX 200135
HELENA MT 59620-0135

BY: Penny Moon, Contracts Officer
(Name/Title)

BY: _____
(Signature)

DATE: _____

TETRA TECH INC.
303 IRENE STREET, PO BOX 4699
HELENA MT 59604
FEDERAL ID # 13-3264076

BY: _____
(Name/Title)

BY: _____
(Signature)

DATE: _____

ATTACHMENT A
CONTRACTOR'S RFP RESPONSE

SECTION 4: OFFEROR QUALIFICATIONS

4.0 STATE'S RIGHT TO INVESTIGATE AND REJECT
Maxim understands and will comply.

4.1 OFFEROR INFORMATIONAL REQUIREMENTS

4.1.1 References

Maxim offers the references listed in **Table 4-1** for stream and wetland restoration projects located in Montana. All projects have been active or completed within the last three years. The first three projects were performed for public agencies and the last three for private companies on private land. More complete descriptions of many of these projects as well as projects located outside Montana are found under our Previous Projects, Section 4.1.4.

Table 4-2 is a list of recent public agency work currently under contract with Maxim. Because we currently have many contracts in place with federal, state, and local government agencies, we have listed only those that are most relevant to our Montana work.

4.1.2 Company Qualifications

Qualifications and Office Locations

Tetra Tech, Inc. (Tetra Tech) is a multi-service environmental and engineering consulting firm with over 375 employees located in 27 offices throughout the intermountain and midwestern portions of the United States. In Montana, the firm employs nearly 120 professional and technical staff at offices in Helena, Missoula, Billings, Bozeman and Great Falls. **Figure 4-1** shows Maxim's Montana office locations and the number of professional and support personnel at each location. Maxim has been in business in the state since 1957 and has provided stream and wetland restoration, enhancement and development services in Montana since 1995.

Maxim specializes in hydrologic and hydraulic engineering, natural resources services, environmental investigations, feasibility studies, engineering design, geotechnical investigations, industrial hygiene and safety, geochemistry, construction oversight, and construction management. Services we provide that are applicable to this solicitation include:

- Stream Evaluation, Restoration and Design
- Stream Hydraulic Modeling
- Bio-engineered Erosion Protection Design
- Wetland Restoration, Enhancement and Development
- Hydrology & Hydrogeology
- Soil Science & Geology
- Biology and Revegetation
- Fisheries and Aquatics
- Hydrogeology
- Geotechnical, Civil, and Geological Engineering
- Construction Materials Engineering & Testing
- Construction Management and Inspection
- Surveying & CADD
- Plan and Specification Development & Preparation
- Field Engineering Assistance & Contractor Coordination

TABLE 4-1 References			
Project Name, Location and Dates of Service	**Nature of Maxim's Services**	**Client and Client Contact**	**Project Participants**
Streamside Tailings Operable Unit, Butte-Anaconda, Montana 1997-Present	Hydrologic and geomorphic investigations, stream channel, floodplain, and wetland design, construction management	Montana Department of Environmental Quality Mine Waste Cleanup Bureau P.O. Box 200901 Helena, MT 59620-0901 Mr. Joel Chavez – Project Manager (406) 841-5031 jchavez@state.mt.us	Gary Fischer, P.E. Bill Bucher, P.E. Larry Cawlfield, P.E. Todd Kuxhaus, P.E. Scott Colvin
Bullion Mine and Millsite Reclamation Project Beaverhead-Deerlodge Natl. Forest, Basin, Montana 1999-2003	Site investigation, analysis of stream sediment, design of stream channel, construction management.	USDA Forest Service, Region 1 P.O. Box 7669 Missoula, MT 59807 Mr. Ray Tesoro - On-Scene Coordinator (406) 329-3523 rtesoro/r1@fs.fed.us	Larry Cawlfield, P.E.
Ontario Mine and Millsite Reclamation Project Helena National Forest Helena, Montana 2000-2002	Site investigation, analysis of stream sediment, design of stream channel and wetlands, aquatic habitat, T & E species, construction management.	USDA Forest Service, Region 1 P.O. Box 7669 Missoula, MT 59807 Mr. Bob Wintergerst - Contracting Officer's Representative (406) 329-3036 rwintergerst@fs.fed.us	Gary Fischer, P.E., Larry Cawlfield, P.E.
Big Timber Wetlands Reserves Project, Big Timber, Montana 2001 to present	Hydrologic, soils, wildlife and vegetation studies, wetland delineation, wetland design and construction monitoring.	Mr. Mark Norem P.O. Box 1285 Big Timber, MT 59011 (406) 932-4606 marknorem@mcn.net	Walt Vering Paul Myers

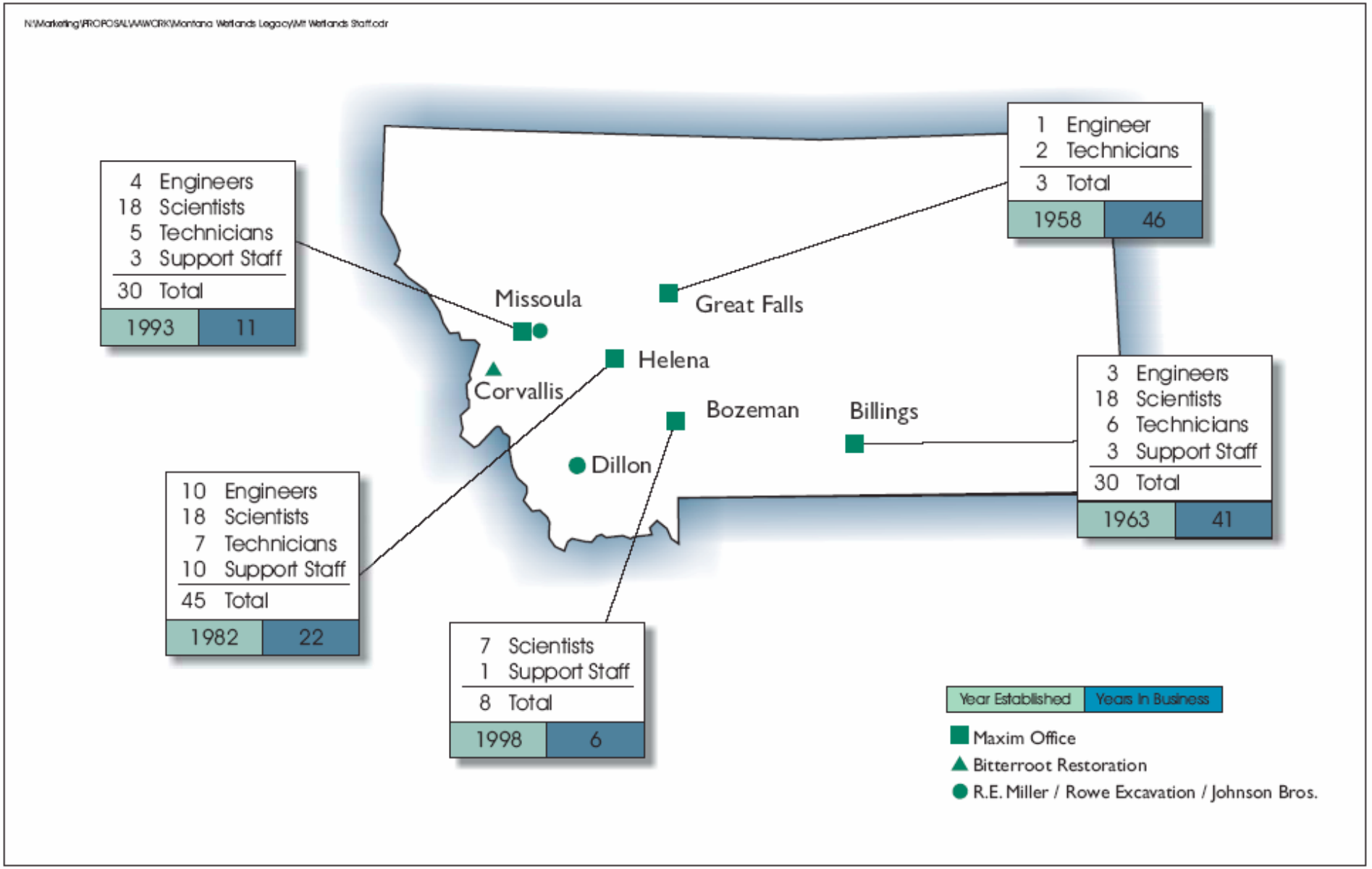
TABLE 4-1 References			
Project Name, Location and Dates of Service	**Nature of Maxim's Services**	**Client and Client Contact**	**Project Participants**
Stream Reconstruction Glendive, Montana 2002-Present	Site investigation, stream design, wetland revegetation, construction oversight.	CHS, Inc. P.O. Box 909 Laurel, MT 59044 Mr. Mike Stahly, Manager Environmental Health and Safety (406) 628-5209 mstahly@chsinc.com	Todd Kuxhaus, P.E.

Spring Creek Stream Reconstruction Conrad, Montana 2002	Investigation, analysis, design of stream and banks features.	Conoco/Phillips, Inc. 600 N. Ashford Threadneedle, TN – 7020 Houston, TX 77079-1175 (832) 379-6167 s.mark.west@conocophillips.com	Larry Cawlfield, P.E.

Table 4-2 - Public Agency Contract Work

Project Name & Location	b. Nature of Firm's Responsibility	c. Agency (Responsible Office) Name and Address and Project Manager's Name & Phone Number	d. Percent complete	e. Estimated Cost (in Thousands)	
				Entire Project	Work Which Firm Is Responsible
Streamside Tailings Operable Unit , Butte-Anaconda, Montana	Site Investigation, Design Engineering, Construction Management.	Montana Department of Environmental Quality Mine Waste Cleanup Bureau P.O. Box 200901 Helena, MT 59620-0901 Mr. Joel Chavez	50	100,000,000 **t**	2,500,000
Clark Fork River Technical Assistance, Western Montana	Technical Review, Engineering Design, Geographic Information Systems Analysis, Report Preparation	Montana Department of Justice Natural Resource Damage Program P.O. Box 201425 Helena, MT 59620-1425 Mr. Doug Martin (406) 444-0234	80	100,000,000	40,000
Environmental Services Montana	Site Investigation, Monitoring, Remediation of hazardous waste and petroleum-contaminated sites.	Montana Department of Transportation 2701 Prospect Ave. P.O. Box 201001 Helena, MT 59620-1001 Mr. Stan Sternberg, Environmental Services (406) 444-7647	5	200,000	200,000
Leaking Underground Storage Tank Trust Program, Montana	Site Investigation, monitoring, remediation of petroleum contaminated sites.	Montana Department of Environmental Quality Mine Waste Cleanup Bureau P.O. Box 200901 Helena, MT 59620-0901 Mr. Jeff Kuhn (406) 841-5055	90	560,000	560,000

Table 4-2 - Public Agency Contract Work					
Project Name & Location	**b. Nature of Firm's Responsibility**	**c. Agency (Responsible Office) Name and Address and Project Manager's Name & Phone Number**	**d. Percent complete**	**e. Estimated Cost (in Thousands)**	
				Entire Project	**Work Which Firm Is Responsible**
General Environmental Engineering Consulting Studies - Western Region and Denver Facilities Service Area	Site Investigations, Pollution Prevention Studies, Remedial Actions, Project Management for Remediation, General Environmental Engineering Investigation Studies	U.S. Postal Service Facilities Service Office Stanford Place One – Suite 400 8055 East Tufts Avenue Parkway Denver, CO 80237	40	5,000	4,500
Bitterroot Valley Sanitary Landfill Groundwater Cleanup; Ravalli County, MT	RI/FS Remediation System Design, Remediation Oversight, Operations and Maintenance	National Institutes of Health Bldg. 13, Room 2W64 9000 Rockville Pike Bethesda, MD 20892 Mr. Jim Carscadden (301) 496-3537	90	5,000	2,000
CERCLA Support Services, New World Response and Restoration Project Park County, MT	Abandoned Mine Reclamation and Restoration Field Studies, Slope Stability Evaluations, Geotechnical, Civil, and Environmental Engineering Design, Construction Oversight	USDA Forest Service, Region I 200 East Broadway P.O. Box 7669 Missoula, MT 59801 Mr. Bob Kirkpatrick (406) 329-3307	98	22,500	5,000
CERCLA/RCRA Services, Region I, Various Locations in MT, ID, ND, and SD	Abandoned Mine Site Assessment, Remediation Design and Construction, Construction Oversight, and Emergency Response	USDA Forest Service, Region I 200 East Broadway P.O. Box 7669 Missoula, MT 59801 Ms. Linda Lanham (406) 329-3153	70	4,500	1,950


N:\Marketing\PROPOSAL\WWORK\Montana Wetlands Legacy\Mt Wetlands Staff.cdr
4 Engineers
18 Scientists
5 Technicians
3 Support Staff
30 Total
1993
11
1 Engineer
2 Technicians
3 Total
1958
46
Missoula
Great Falls
Helena
Corvallis
Bozeman
Billings
Dillon
3 Engineers
18 Scientists
6 Technicians
3 Support Staff
30 Total
1963
41
10 Engineers
18 Scientists
7 Technicians
10 Support Staff
45 Total
1982
22
7 Scientists
1 Support Staff
8 Total
1998
6
Year Established
Years In Business
Maxim Office
Bitterroot Restoration
R.E. Miller / Rowe Excavation / Johnson Bros.

Maxim employs Geographic Information System (GIS) analysts, computer assisted design and drafting (CADD) operators, data base specialists, clerical staff, graphic artists, and field technicians who conduct work with the necessary equipment to allow us to provide full-service, state-of-the-practice engineering and environmental consulting services.

Maxim's approach to stream restoration and stream renaturalization is based on hydrologic and geomorphic principles integrated with an understanding of aquatic habitat. For smaller projects we have found it useful to perform a Rosgen Level II stream classification to establish general parameters for stream reconstruction. Design details are refined through hydrologic, hydraulic and sediment transport calculations as needed. Habitat features are incorporated as appropriate for the stream type and natural materials such as logs, appropriately sized and placed rock, and fascines. Examples of applications of this approach are restoration of Jill Creek (Bullion Mine) and Ontario Creek.

Where complete reconstruction of the stream and floodplain is necessary, greater emphasis is placed on geomorphic, hydrologic, hydraulic and sediment transport calculations. In these highly disturbed systems, careful control of shear forces on bed, banks and floodplain is needed during the period that the natural system is reestablishing. Because we apply bio-engineering material such as coir fabric on these sites, as the floodplain and banks strengthen, the stream and floodplain gradually evolve into a naturally functioning system without catastrophic failure. An example of this approach is the work on Silver Bow Creek near Butte for the Montana Department of Environmental Quality rehabilitating over 25 miles of stream. Specifically, Maxim has completed detailed stream analysis, design and construction oversight services over the past 7 years for ten miles of Silver Bow Creek that have included:

- Design and construction of bio-engineered fabric-encapsulated streambanks;
- Incorporation of fish habitat features such as log and boulder placements, overhanging banks and step pools in steep sections;
- Design and layout of stream channel planform and cross sections for grade and bank-full flow requirements;
- Conducting geomorphologic analyses to determine bed material design and sediment transport requirements;
- Characterizing and classifying the existing stream using hydrologic, hydraulic and fluvial geomorphic analyses;
- Design of reinforced toe features to provide temporary stability of pool outer banks;
- Preparation of construction plans and specifications; and
- Construction management and oversight of stream construction activities.

For the past five years, Maxim has provided stream and wetland restoration services for the USDA Forest Service and private clients on various Montana projects. For each of these projects, Maxim determined project objectives, conducted existing conditions evaluations and analyses for baseline data, provided design and construction oversight services, and recommended or provided monitoring services for evaluating future performance. In all cases, Maxim used state-of-the-practice methods for various phases of evaluation and design.
Maxim's wetland services include:

- Collecting surface and groundwater data;
- Investigation and evaluation of soil conditions;
- Wetland delineations;
- Conducting functions and values assessments;
- Engineering design;
- Environmental permit preparation;
- Construction oversight of wetland construction activities; and
- Agency liaison.

Detailed descriptions for past projects are included in Section 4.1.4 and project references were shown in Section 4.1.1 of this proposal. We are confident that you will find our experience and reputation are well suited for stream and wetland projects described in this solicitation.

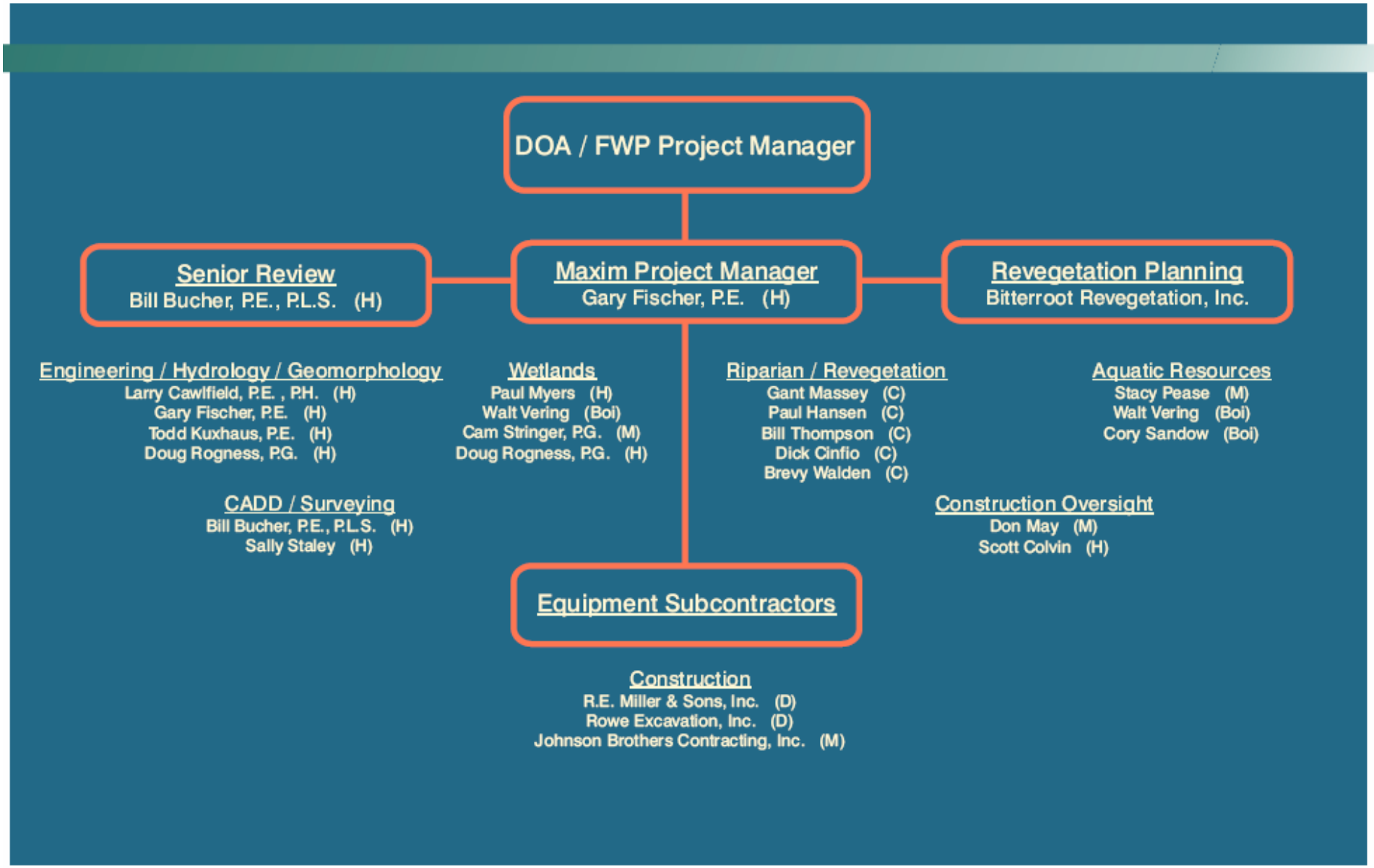
Management Approach

We propose to administer and manage this contract out of our Helena office, home to our proposed project manager, Mr. Gary Fischer, P.E., and centrally located to coordinate activities across the state. Our Helena office has approximately 45 employees with 4 hydraulic/hydrologic engineers experienced in stream restoration and reconstruction design; two wetland and vegetation biologists; three hydrogeologists; and other environmental scientists, biologists, geologists, technicians, CADD/GIS operators, construction materials testing laboratory and support staff. Our Helena office is located within 15 minutes of FWP and DOA headquarters, allowing convenient face-to-face communication with agency project managers.

Figure 4-2 shows our proposed organizational structure, locations of key personnel, and the division of responsibilities. For FWP stream and wetland restoration projects, Maxim has designated Mr. Fischer as the main point of contact for FWP and DOA project managers. Other key personnel shown on our organizational have the qualifications and experience needed to perform stream and wetland restoration services for this contract. Detailed descriptions of our team's qualifications, training and project experience are found in Section 4.1.5 of this proposal.

Mr. Fischer's experience in project management, water resources engineering, and his location in our Helena office make him especially qualified to manage restoration projects. Mr. Fischer will communicate directly with the FWP project manager and our team coordinators. Mr. Fischer will determine which Maxim and subcontractor personnel are best suited to work on particular assignments based on their expertise, experience, and availability. Selection of construction subcontractors will be a cooperative decision between FWP and Mr. Fischer. Mr. Fischer will be accountable for completion of the various projects or assignments to the satisfaction of FWP.

If awarded this contract, Maxim will use frequent and accurate personal, telephone, written and email communication with the State to cooperatively set and update contractual agreements, and project scopes, budgets and schedules. We prefer to conduct face-to-face meetings between the Maxim project manager and key personnel and FWP and DOA staff to promote good communication. The key components of Maxim's management system are personnel training and senior review of our projects. Maxim project managers undergo substantial training to ensure that they understand our internal systems and are well equipped to handle the needs of our various clients. The training covers Maxim's accounting system, which is focused on project support, as well as schedule and scope management using various types of applicable software. Our personnel are further trained in methods to manage human and equipment resources as well as client interface methods. Along with this training, Maxim promotes periodic and routine reviews of projects by its senior staff to ensure project management plans are being followed, health and safety needs are addressed, and the quality expectations for the projects are achieved. Such audits, although not directly seen outside of Maxim, result in our clients receiving the best possible product in a timely manner.



Office Locations

H – Helena	B – Billings
M - Missoula	D – Dillon
C – Corvallis	Boi - Boise

Strategically, Maxim's locations in Montana provide an advantage to efficiently perform all phases of the projects anticipated in this solicitation and to establish effective relationships with FWP personnel. Our Helena office location is ideal for close and frequent management communication between all parties. Our other Montana offices allow rapid access to most sites in the state and a local presence with FWP field offices. We have established solid working relationships with FWP on many projects, including the following:

- Engineering design and construction management for the York Bridge access site;
- Engineering inspection and reporting services for the safety inspection of Eureka Dam; and
- Instream Flow Analysis for Cedar Creek.

Our goal is to provide not only excellent restoration services, but to establish a long-lasting relationship with FWP. We will work diligently to earn the State's respect and trust. We strive to create an environment where Maxim and State personnel rely on each other's opinions and technical capabilities to successfully reach the objectives of FWP on these projects. We truly feel our past relationship with FWP and our qualifications will attain these goals.

Response to Specific Project Assignments

Once a project assignment is presented to Maxim, we will work together with FWP to develop a project work plan and budget to guide successful completion of the project. In addition to the procedures identified in the RFP for cooperatively developing project feasibility, conceptual design and costs with FWP, Maxim will address project staffing and schedule. Each project will be staffed with the best qualified personnel who are geographically near the project. A project schedule would be prepared to highlight the timing when major milestones of each phase of the project will be achieved. Such a schedule allows review time for our client, management personnel, and for any regulatory personnel involved, if necessary.

Support Services

Maxim offers a variety of support services that would be available to FWP for stream and wetland restoration projects. These services include CADD, GIS, drilling, monitoring well installation, surveying, construction materials testing, and construction oversight. Our CAD operators are equipped with state-of-practice software and hardware, including color laser printers and E-size color plotters. Maxim offers a variety of GIS mapping services and GIS analytical experience that directly pertains to the types of work products expected by FWP for these stream restoration projects.

We operate hollow-stem auger drill rigs and support equipment that enables us to efficiently collect information regarding subsurface conditions, collect material samples with minimal disturbance, and install piezometers or wells. We employ a Professional Land Surveyor and have a survey crew equipped with sub-meter GPS and total station survey equipment. We operate materials testing laboratories in Missoula, Helena, Great Falls, and Billings where we are able to determine construction, as well as hydraulic, properties of earthen materials. Our engineers and construction technicians have a wealth of experience overseeing stream and wetland construction projects, as well as large construction projects involving earthwork, dewatering, and synthetic material handling.

Support Equipment

Successful engineering and environmental consulting today requires firms to offer a wide range of capabilities supported by a variety of updated office and field equipment. Maxim's Montana offices offer GPS surveying and GIS database/mapping capabilities using ArcView, ArcCAD, and ArcInfo software. Some of the hardware and software equipment we own that supports our GIS/CAD group include technically-advanced servers and work stations, color high-speed printers and plotters, digital cameras, full AutoCAD suite of software, and Microsoft office software. Maxim also offers full report preparation and production capabilities that can be distributed to our clients in most desired formats.

Maxim offers a comprehensive line of equipment used to support most field investigations. For restoration projects, our equipment includes 4-wheel drive trucks and ATVs, current meters, sediment samplers, specific conductivity meters, turbidity meters, and dissolved oxygen and pH meters. Maxim also has preferred providers of specialty environmental equipment who can ship equipment to project sites on an overnight basis.

4.1.3 Subcontractor Experience

Maxim will subcontract to one of three Montana equipment operators for construction of awarded projects. In addition, Maxim will subcontract riparian revegetation work to Bitterroot Restoration, Inc. of Corvallis, Montana. The stream and wetland restoration work will be performed by Maxim, which also has registered Montana engineers who will execute engineering designs.

Revegetation Subcontractor

Bitterroot Restoration, Inc. (BRI) was founded in 1986 to provide comprehensive restoration services to managers of disturbed lands. BRI will be providing vegetation planning services for this project as well as plantings and revegetation labor. Planning services include vegetation assessment, development of revegetation plans, review of existing vegetation, and vegetation monitoring. The BRI team applies their understanding of ecological principles knowledge of individual site characteristics to guide restoration efforts. This ecological approach leads to restoration of natural processes and self-sustaining plant communities.

BRI has provided floodplain assessment and prime contracting services to the EPA for Superfund sites in California, Idaho, and Montana. BRI has also supplied planning and implementation services for multiple USACOE riparian and floodplain projects in the Central Valley of California. BRI provided flood damage assessment and restoration services for Yosemite National Park.

BRI currently employs 40 permanent staff at their Montana and California offices. This staff consists of specialists in the fields of watershed and ecosystem analysis and planning, as well as experts in the fields of project management, stream hydrology, technical writing, GIS/CAD technologies, and aquatic, wetland and terrestrial ecology. In addition, BRI's staff includes professionals in the fields of site restoration, plant physiology, plant pathology, photoremediation, soil science, seed ecology, geology, forestry, computer programming, quality assurance, safety, and landscape planning and ecosystematic design. For this proposal, BRI is contributing its full set of corporate skills and experience.

The following are a selection of projects for which BRI has performed revegetation planning and planting.

Restoration of Native Vegetation on Silver Bow Creek, Butte, Montana. From 2001 to 2003, BRI propagated and installed more than 100,000 native shrub and tree seedlings and over 100,000 wetland herbaceous plants along five stream miles following reconstruction of the uppermost reaches of Silver Bow Creek (Streamside Tailings Operable Unit). In 2003, BRI was again contracted with the Montana Department of Environmental Quality to provide all plant production and implementation services for the subsequent five stream mile native ecosystem restoration phase following the reconstruction activities to take place from 2004 through 2008. Services provided by BRI include planning and scheduling of seed collection and propagation activities in collaboration with the state's designer; site specific seed collections of four willow species and other desired wetland and shrub species; propagation of containerized plant material ranging from three-cubic inch to five-gallon in size; and installation of all plant material in riparian, wetland and upland plant communities.

Upper Clark Fork River Operable Units, Butte, Montana: In 1997, BRI was hired by ARCO to test various stabilization methods for contaminated stream banks in the upper Clark Fork River Basin. This 120-mile long river system has been contaminated with phytotoxic concentrations of metals stemming from upstream mining activities in Butte and Anaconda, Montana. BRI's work focuses on the effectiveness of various combinations of wetland plant species, organic material (logs, root wads) and manufactured erosion control materials to reduce erosion and river bank failure. In related work, BRI provided native plants and implemented replanting of the Mill-Willow Bypass of the Warm Springs Ponds Operable Unit, an immediate headwater tributary of the Clark Fork River. BRI also conducted bench-scale green house studies on plants native to the upper Clark Fork River regarding their tolerance to metals and tested soil amendment protocols for transforming acidic metals-enriched soils into useful growth media.

Streambank Stabilization Demonstration Project on Mine-Impacted Streambanks on the Upper Clark Fork River: During 1996 and 1998, Dr. Paul Hansen and his team planned, secured permitting, implemented and monitored streambank stabilization treatments to test a range of designs as alternatives to "hard" treatments, such as riprap and rigid structures. The objective was to test effectiveness of a suite of "soft" treatments in reducing erosion and to evaluate their relative costs as functions of the severity of streambank instability and other factors. Twelve different treatments were installed on 14 reaches totaling 5,078 feet of streambank. In addition, 9,455 feet of streambank were analyzed as five separate untreated control reaches. Monitoring data on 140 permanently monumented cross-sections within the study has yielded insights on the relative cost effectiveness among the various combinations of methods, including stream bank reshaping, revegetation with seedlings and mature transplants, use of coir fabric and fascine, and the installation of rock root-wads and logs.

Thompson River Conceptual Plan and Demonstration Project, Thompson Falls, Montana:
The Thompson River in northwestern Montana is a key migratory corridor for bull trout, a federally listed Endangered Species. Years of agricultural and grazing practices have eliminated riparian habitat essential for healthy fish populations. The Endangered Species Act listing of bull trout inspired Plum Creek Timber Co. to develop a Habitat Conservation Plan for their land. Plum Creek contracted BRI to develop a plan to enhance bull trout habitat along a segment of the Thompson River as a demonstration project. During the fall of 1998, BRI field crews installed coir fascines to protect eroding banks and provide substrate for riparian shrubs. Using an excavator, crews scarified areas dominated by aggressive reed canary grass that was choking out native vegetation. BRI crews also planted native seedlings and installed rigid browse protectors and mulch mats. During the spring of 1999, crews returned to install willow cuttings that not only provide additional overhanging bank vegetation, but also add strength to the banks. Results of the effectiveness of the techniques used in this project will refine future projects along the Thompson River and serve as a model for bull trout habitat restoration projects region-wide.

BRI brings a variety of highly trained personnel to the Wetlands Legacy project. Dr. Paul Hansen, Dr. Gant Massey, and Bill Thompson are plant ecologists who have specialized in riparian and wetland vegetation. On the plant installation side of the company, Dick Cinfio is BRI's Rocky Mountain Restoration Services Manager and Brevy Walden is a project supervisor with extensive experience with project implementation. Brief resumes for these personnel are presented below and complete resumes are in **Appendix B**.

Paul Hansen, Ph.D., Senior Consultant. Ph.D. Plant Ecology, 1985, M.A. Plant Ecology/Botany, 1980, B.A. Biology/Botany, 1977. Prior to joining BRI in 2001, Dr. Hansen was Director of the Riparian and Wetland Research Program at the University of Montana for 15 years. Dr. Hansen has conducted research on the classification, inventory and mapping, natural resource management, grazing/livestock management, water quality concerns, and restoration of riparian areas, wetlands, and uplands throughout western North America.

J. Gant Massey, Ph.D., Director of Operations.Ph.D. Riparian and Wetland Research Program, 2002, M.A. Liberal Studies/Public Policy, 1994, B.S. Biology, 1986. Since 1999, Dr. Massey has worked for BRI providing consulting services related to assessment and revegetation of severely disturbed environments, particularly wetlands and riparian areas. He has conducted riparian assessments of rivers and streams in Montana and Idaho including the Basin Creek/Tenmile Creek mining area near Helena, the upper Clark Fork River Basin, and the Beaverhead River. Dr. Massey will coordinate BRI's involvement in projects under this contract.

Bill Thompson, Riparian and Wetland Ecologist, M.S. Forestry/Riparian Ecology, 1994, B.S. Electrical Engineering, 1969. Mr. Thompson has proven ability to organize, execute and complete scientific field studies including stream, riparian and upland plant surveys. He has a strong practical and theoretical foundation in riparian and wetland ecology from years of work with the Montana Riparian and Wetland Research Program a the University of Montana, Missoula, Montana. He will lead project revegetation investigations under this contract.

Dick Cinfio, Rocky Mountain Restoration Services Manager. Mr. Cinfio joined BRI in 2003 with 16 years of management experience in the specialized construction industry. In addition to supervising and training a staff of 75 employees, he was responsible for coordinating yard activities, shipping and receiving, purchasing

supplies and equipment, safety training, interaction with regulatory agencies, and compliance with EPA, USACOE and OSHA regulations. Mr. Cinfio will coordinate planting programs at the sites reconstructed under this contract.

Brevy Walden, Project Supervisor. B.S. Resource Conservation, 1997. Mr. Walden has over 10 years experience performing ecological revegetation in the Intermountain West. As Restoration Services Project Supervisor, he manages project budgets, schedules, supervises and trains field crews, assures appropriate equipment and supplies are project-ready and project-delivered, coordinates with clients, fulfills reporting requirements, troubleshoots in the field and resolves conflicts related to project communication and coordination.

Equipment Subcontractors

The three equipment contractors on our team are:

- R. E. Miller and Sons, Inc. of Dillon, Montana
- Rowe Excavation, Inc. of Dillon, Montana
- Johnson Brothers Contracting, Inc. of Missoula, Montana

R. E. Miller and Sons, Inc. is a full-service excavating that has served western Montana for over 38 years. Natural resource enhancement accounts for approximately sixty percent of the company's annual contracts. The remainder of R. E. Miller and Sons workload is in irrigation, road construction, and site development. Natural resource enhancement work has included river restoration, fish habitat improvement, stream bank stabilization, pond construction, and wetland construction.

The company has completed the construction of over fifty ponds, several miles of stabilization on the Madison, Beaverhead, Ruby, Jefferson, Big Hole, Red Rock, and Gallatin Rivers, and trout habitat structures and improvements throughout southwestern Montana. R. E. Miller and Sons has constructed spawning channels, bridges, fish traps, fish screens, and waterfowl habitat structures and has worked with a variety of stream forms and designed channels.

The following list illustrates only a portion of the projects R. E. Miller and Sons has completed in the last two years.

Montana Fish Wildlife and Parks- Box Culvert- November 2001: This project consisted of replacing a wooden bridge with an 8'w x 12'h x 12'l concrete box culvert across an irrigation ditch leading to the Beaverhead Rock State Park.

McCoy Cattle Company- Albers Slough Enhancement-1996- Present: To date R. E. Miller has restored over 2,000 feet of the stream. The enhancements include: riffle pool sequences, bank stabilization and habitat utilizing root wads and rock, tree revetments, willow clumps.

Kingfisher Inc.-Leonard Slough – June 2003: R. E. Miller and Sons re-constructed a slough with riffle/pools enhancement.

Trailsend Ranch- Ruby River Bank Stabilization, Seylor Slough Rehab. 1995- Present: R. E. Miller and Sons has completed numerous bank stabilization and trout habitat enhancement projects for the Trailsend Ranch in Madison County, Montana. The ranch is located just south of Twin Bridges on the Ruby River. River banks along the ranch are eroding and the trout fishery was degrading. Through the innovative use of native plant re-vegetation, root wads, rock barbs, meander pools, and grade control devices, R. E. Miller has both stabilized banks and improved the fishery. R. E. Miller and Sons has been responsible for design, permitting and implementation of many projects on the Trailsend Ranch. During the winter of 2000-2001, R. E. Miller and Sons rebuilt 5,000 feet of Seylor Slough. The slough was widened and degraded due to overgrazing. The project mission was to narrow the slough and recreate meanders, riffles and pools.

Montana Fish Wildlife and Parks- May 2001- Prickly Pear Creek: The design required narrowing and realigning portions of the channel, expanding channel capacity through bank sloping and installing natural revetments on outside meander bends (root wads, tree revetments, willow and sod clump transplants).

Cal Erb - Albers Slough Enhancement- March 2004 – Present: The landowner hired R. E. Miller and Sons to rehabilitate 1,800 feet of the slough using riffle-pool sequences and natural woody debris habitat. Narrowing of the stream and excavating pools has resulted in a fishable stream. Equipment available from R. E. Miller and Sons includes:

- Excavators – Komatsu 150 and 200, CAT 315 and 320.
- Articulated loader – Komatsu 320 or CAT 938
- Scraper – John Deere 860 or CAT 613
- Dozer – CAT D7f, D7Gor D6M
- Dump Trucks – minimum 10 cy
- 6 x 6 off-road articulated haul truck
- Bobcat
- Tree spade – 42 in. width
- ATV
- Powered Boat

Name	Years of Experience
Tomas Miller	30
Wesley Eggers	15
Chris Mehring	15
Jason Wolfe	18
Earl Conklin	20
Randy Norris	12
Cliff Mantha	5
Jeff Love	8
Ron Doering	6

Rowe Excavation, Inc., is a moderately sized, specialized firm that performs almost exclusively stream rehabilitation and related water resource improvements. Rowe Excavating, Inc. had successfully completed many projects for the Department of Fish, Wildlife and Parks as well as other private owners and governmental agencies.

Representative projects that Rowe Excavating, Inc. has constructed include:

- Bank Stabilization and Fish Barrier Construction, Tash Ranch near Beaverhead River, Montana.
- Channel Reconstruction and Realignment, Big Spring Creek near Lewistown, Montana.
- Grade Control Structure Installation, Racetrack Creek near Anaconda, Montana.
- Channel Rehabilitation, Stone Creek near Dillon, Montana.
- Channel Realignment and Rehabilitation, Deep Creek near Wise River, Montana.

Equipment available with Rowe Excavating includes:

- Tracked Excavators from Cat 200 to 330 models.
- 18 cy 6 x 6 haul trucks
- Tracked haul trucks
- D3, D5H LGP, and D6 dozers
- Loaders – 2 to 4 cy buckets
- 14 ft. moldboard grader with ripper
- 18 cy scraper
- 12 cy dump truck
- Transport truck and trailer

- 2 in. to 16 in. pumps
- 60 in. vibratory roller

Mr. Kelly Rowe, president of the company, has over 17 years of experience in the construction field primarily related to water resource projects. Three other supervisors within the company each have from four to seven years experience.

Johnson Brothers Contracting, Inc. has over 30 years experience in excavation contracting. This firm has performed work on a variety of stream restoration projects for private owners and agencies. Their work experience also includes pond construction and stream relocations. Projects performed by Johnson Brothers include:

- Murphy Spring Diversion, Ovando, Montana.
- Williams Ditch Improvements, Rattlesnake Creek, Missoula, Montana.
- Clark Fork River Bank stabilization, Missoula, Montana.
- Rattlesnake Creek Bank Stabilization, Missoula, Montana.
- Cold Creek Bank Stabilization, St. Ignatius, Montana.

Equipment available from Johnson Brothers Contracting includes:

- Excavators – Komatsu 120 and 200 models
- Loader - Komatsu 350
- Scraper - CAT 613
- Dozers – CAT D7 and Dresser TD8
- Dump trucks – 12 cy.
- CAT 6 x 6 off-road articulated dump truck
- Skid Steer Loader – Bobcat 753
- Tree Spade – 42 in.
- ATV
- Powered Boats

The experience and training of Johnson Brothers contracting operators are listed below:

Name	Years of Experience	Specialized Skills and Training
Larry Roberts	25	Commercial Drivers License, OSHA Hazardous Materials, Excavation Safety Training
Jody Malatare	19	Commercial Drivers License, OSHA Hazardous Materials, Excavation Safety Training
Robert Hadac	19	Commercial Drivers License, OSHA Hazardous Materials, Excavation Safety Training
Willie Lovell	15	Commercial Drivers License, Excavation Safety Training
Marty Trott	18	Commercial Drivers License, Excavation Safety Training
Jim Pringle	21	Commercial Drivers License, Excavation Safety Training

Section 4.1.4 Previous Projects

The following are stream and wetland restoration projects completed in the last five years in which Maxim was the prime contractor.

Silver Bow Creek Reconstruction and Habitat Enhancement at the Streamside Tailing Operable Unit Stream, Silver Bow Creek/Butte Area NPL Site

Location: Butte, Montana

Clients: Montana Department of Environmental Quality and Montana Department of Justice (Natural Resources Damage Program)

Dates: 2000- present

Maxim has been a contractor to the Montana Department of Environmental Quality on the Streamside Tailings Operable Unit of the Silver Bow Creek/Butte Area National Priorities Site since 1984 and is now the engineer for the design and construction of this 25 mile long operable unit. This extensive project involves remediation of about 2.5 million cubic yards of mine and mill wastes on 1,270 acres of the Silver Bow Creek floodplain, and the reconstruction of the stream channel and floodplain. Stream design has been based on the goal of restoring a naturally functioning stream channel to the extent possible. Design requires geomorphic, hydrologic, hydraulic and sediment analysis of the stream system; determination of a natural grade for the stream; development of pool, riffle and run sections; and use of bioengineering principals to recreate a naturally functioning stream. Habitat features have been developed and constructed to enhance fish and aquatic environment in Silver Bow Creek. Features include step-pools, V weirs, random boulder placements, and log placements. Five miles have been constructed and three additional miles are under construction in 2004. The project requires reconstruction of the floodplain with uncontaminated materials and vegetative backfill. The reconstructed floodplain is revegetated with both riparian and upland communities.

Soda Butte Creek Restoration at the New World Mining District Response and Restoration Project

Location: Cooke City, Montana

Client: **U.S. Department of Agriculture, Forest Service**

Dates: **2000 - 2001**

Maxim is the design engineer for the reclamation of the New World Mining District near Cooke City, Montana. Over 150 source areas are present in the New World Mining District, which have caused water quality degradation in several watersheds. Identification of man-created impacts is compounded by the existence of naturally occurring near-surface sulfide ore bodies which may have naturally impacted area streams. Source areas include acid discharges, tailings, and waste rock. This high altitude reclamation project involved the removal of the Rommel Tailings at the head of Soda Butte Creek. Hydrologic and hydraulic calculations were used to determine the channel dimensions and bank and bed construction materials. After removal of the tailings, the stream was reconstructed through the site using fabric encapsulated soil banks and imported streambed material. A low flow channel was constructed within the main channel and the floodplain was reconstructed with local non-impacted material. The design of this Rosgen Classification type B4 stream was based on the morphological characteristics of the undisturbed reach immediately downstream of the tailings.

Jill Creek Restoration at the Bullion Mine and Millsite Reclamation Project

Location: Beaverhead-Deerlodge Natl. Forest, Basin, Montana

Client: **U.S. Department of Agriculture, Forest Service**

Dates: **2003**

This project for the USDA Forest Service was a mine reclamation project located on the Beaverhead-Deerlodge National Forest. The abandoned mine and millsites impacted the Basin Creek watershed. The Bullion Mine and Millsite consisted of several waste rock dumps, acid discharges, and tailing deposits that was present in and along Jill Creek, a tributary to Jack Creek. Jill Creek is a perennial stream in a high gradient mountain environment. Maxim designed replacement bed and banks for the stream. Design features included step-pool configuration to effectively control energy in the high gradient environment. The design also featured a blended stream bank consisting of log and rock drops between which the stream bank was designed with

fabric encapsulated soil lifts. Restoration of the streambanks and stream bed was accomplished following removal of the tailing deposits in and near the stream. Maxim also designed a temporary, re-useable diversion pipeline to divert the live stream around the site during construction activities. Disturbed areas and stream banks were seeded and plantings were part of the revegetation effort.

Ontario Mine and Millsite Reclamation Project

Location: Helena National Forest,

Helena, Montana

Client: **U.S. Department of Agriculture, Forest Service**

Dates: **2003**

This project for the USDA Forest Service was a mine reclamation site located on the Helena National Forest. This abandoned mine and mill site impacted water quality in the Little Blackfoot River watershed. The Ontario Mine and Millsite consisted of a large waste rock dup, acid discharges, and tailings deposits that are present in and along Ontario Creek. Ontario Creek is a bull trout-rearing stream and water quality issues, including highly contaminated bed sediment in the stream, were major limiting factors to bull trout vitality in the creek. Maxim designed replacement stream bed and banks for areas in which mining impacted material was removed. Maxim also designed a temporary diversion to divert a live stream during excavation and rebuilding of streambed and banks.

The project also consisted of the design of a series of seven small wetlands created by low berms to replace wetlands where mining impacted material was removed. The design included structures for control of water at the outlet of each wetland and intervening channels between wetlands. The Rosgen stream classification system was used to define reconstruction of the Class E3 tributary construction.

During construction, Maxim provided part-time construction inspection services to ensure construction complied with the design specifications. Construction of the project was completed in 2002 and Maxim proposed a final construction report to document construction activities and costs.

Wetland Development Project Location Adjacent To Yellowstone River

Location: Big Timber, Montana

Client: Mr. Mark Norem

Dates: 2001- present

Maxim is assisting a client that owns land adjacent to the Yellowstone River near Big Timber, Montana enhance, restore and create wetlands. Maxim has collected a significant amount of field data on this project including surface and groundwater data, soil conditions, competed a wetland delineation on existing wetlands and conducted a functions and values assessment of existing wetlands at the site. Maxim is assisting the client in developing wetland reserves on this property with the intent to place these reserves under a conservation easement and distribute these reserves to the state transportation department to compensate for wetland impacts elsewhere. Maxim has acted in the following capacities on this project: baseline data collection, engineering design, environmental permit preparation, construction oversight, and agency liaison.

Wetland Mitigation Bank Project

Location: North Platte, Nebraska

Client: City of North Platte

Dates: 1997 - present

Maxim is currently supervising the permitting process for a large wetland mitigation bank in central Nebraska. Work for this project involved the delineation as well as the assessment of functions and values for the wetland that was destroyed, collection of preliminary hydrological information at the proposed mitigation site and the preparation of a detailed mitigation plan. Maxim personnel handled all biological and engineering components of this project as well as the supervision of construction and coordination of short and long term monitoring requirements. This project was the first successful private mitigation bank in the state of Nebraska and has received praise in project design and implementation by eight state and Federal agencies involved in approving the project.

Wetland Restoration and Enhancement Project Soda Springs, Idaho

Location: Soda Springs, Idaho

Client: Astaris Corporation

Dates: 1998 - present

As part of a mitigation plan for impacts to wetlands, Maxim assisted a client in restoration and enhancement activities on 266 acres of degraded wetlands in southeastern Idaho. Restoration work involved stream bank enhancement on several miles of creek that pass through the property; removal of cattle grazing; repair of several earthen water control structures; a complete repair of a blown out dam and noxious weed control. Enhancement activities involved numerous woody vegetation plantings such as willow, dogwood and cottonwood. Nesting platforms and nesting cover for upland game birds, waterfowl and other wildlife have been added to the property. As required by the mitigation plan, Maxim biologists conducted monitoring of baseline conditions and annual vegetation.

Stream Reconstruction

Location: *Conrad, Montana*

Client: Conoco Pipeline Company

Date: October 2002

Approximately 105 lineal feet of the channel of Spring Creek was removed in October 2002 during excavation activities performed to remove soil impacted by a crude oil release. The intent of the stream reconstruction was to replace the removed channel and banks with a channel whose route, grade, dimensions and materials closely match characteristics of the original stream channel. Work was completed in accordance with a U.S. Army Corps of Engineers 303 permit. Prior to construction, the stream centerline and elevation were surveyed. Pre-excavation survey information was used to stake out the centerline and elevation of the replacement channel. Stream reconstruction took place in the following steps:

1. The stream channel was excavated through the backfill.
2. The excavation was larger than the finished channel to allow for placement of streambed material and banks.
3. Streambed gravel was placed in the excavation to a minimum depth of 6 inches and to bring the elevation of the streambed to pre-excavation elevation.
4. The lower lift of stream banks was built on both the left and right banks of the stream. Soil composing the lift was encapsulated in biodegradable fabric to stabilize the channel during revegetation.
5. A second lift of stream banks was built on top of the first lift. Seed was scattered on the soil surface before the fabric was pulled back over the topsoil and staked in place. The finished top width of the channel was approximately 6 feet. The finished depth of the completed channel was matched to the pre-excavation channel depth.
6. Backfill was placed behind the completed banks so they blended smoothly with the adjoining upland areas.

Following completion of the channel, the flow of Spring Creek was turned back into the reconstructed channel and a temporary diversion channel was backfilled. A streamside seed mixture was used in the soil encapsulated banks of the stream reconstruction area. Adjoining areas received an upland seed mix. Inspection of the area in June 2003 indicated the reconstruction successfully resisted erosion from bankfull flow during spring runoff.

Section 4.1.5 Staff Qualifications

This section identifies the Maxim staff that may be used to work on this contract. Professional rates for each of the staff members in this section are shown in Section 5 of this proposal. **Table 4-3** summarizes stream and wetland restoration qualifications and experience of Maxim staff for these projects. Maxim is a full-service environmental and engineering company, and as such, we will provide all in-house engineering services for all aspects of restoration, enhancement and development projects.

The following are brief narratives for each Maxim team member, describing their roles, experience and qualifications for conducting stream and wetland restoration projects. Complete resumes are included in **Appendix A** of this proposal.

TABLE 4-3 PERSONNEL QUALIFICATIONS & EXPERIENCE

					PROFESSIONAL REGISTRATIONS				SPECIALTY TRAINING				TECHNICAL EXPERTISE										
Team Member	Project Role/Responsibility	Academic Degrees	Total Years Experience	Years Experience On Similar Restoration Projects	Montana P.E.	Professional Hydrologist	Montana P.L.S.	Professional Geologist	Applied River Fluvial Geomorphology	Hydrology	Wetland Restoration	Stream Restoration	Project Management	Enhancement and Wetland Restoration, Development	Enhancement and Stream Restoration,	Development	Enhancement and Development Aquatic Resource Restoration,	Hydrology	Hydraulic Analysis of Streams	Hydrogeology	Materials Testing Construction Inspection and	Surveying/CADD
Gary Fischer, P.E.	Project Manager/Stream Restoration	B.S. Civil Engineering; M.S. Agricultural Engineering	24	17	X				X	X		X	X		X			X	X		X	
Bill Bucher, P.E., P.L.S.	Senior Review	B.S. Engineering Physics	36	12	X		X		X	X		X	X		X			X	X		X	X
Larry Cawlfield, P.E., P.H.	Stream Restoration/Hydrology and Hydraulics Engineering	B.S. Civil Engineering; M.S. Civil Engineering	21	15	X	X			X	X		X	X		X			X	X		X	X
Todd Kuxhaus, P.E.	Stream Restoration/Hydraulics Engineering	M.S. Geological Engineering	10	5	X										X				X		X	X
Cam Stringer, P.G.	Hydrogeology	M.S. Geology; B.A. Biology	12	8				X					X	X						X		
Paul Myers	Wetland Restoration	B.S. Biology	9	9							X		X	X								
Doug Rogness	Hydrology/Wetland Restoration	M.S. Hydrology; B.S. Earth Sciences	25	15				X		X	X		X	X				X				
Walt Vering	Wetland/Aquatic Resource Restoration	B.A. Biology; M.S. Natural Resources-Wetlands	10	10							X		X	X	X		X					
Stacy Pease	Aquatic Resource Restoration	B.S. Wildlife and Fisheries Science; M.S. Watershed Management	7	7													X					
Cory Sandow	Aquatic Resource Restoration	B.S. Biology	3	3							X			X			X					
Sally Staley	Surveying /CADD	High School Graduate	24	12																		X
Don May	Construction Inspection/Testing	B.A. Geography	12	5																	X	
Scott Colvin	Construction Inspection/Testing	B.S. Construction Engineering Technology	20	10																	X	

4.1.6 Project Review Service Experience

As one of the larger, long-established environmental contractors in Montana, Maxim is very sensitive to potential conflicts of interest in its work. For example, in its 20 years of work with the Montana Department of Environmental Quality on Superfund sites in the Butte-Anaconda area, Maxim has never worked for the Potential Responsible Parties (PRP) associated with these sites. In addition, Maxim employees have maintained an objective approach to the work through initial project execution, to a role as technical reviewers while the PRP led the project, and now again as lead firm for project execution.

All Maxim personnel are required under their terms of employment to maintain confidentiality in their work. In our work for the Department of Justice Natural Resource Damage Program, many of the personnel proposed for the Montana Wetlands Legacy project have maintained strict confidentiality for our client while developing materials to be used in settlement talks or potential litigation. We have also served this client as a reviewer for their grant application program while maintaining appropriate distance from applications that could affect our activities in the upper Clark Fork River Basin.

APPENDIX A: STANDARD TERMS AND CONDITIONS

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.

ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES: The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

ACCESS AND RETENTION OF RECORDS: The contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

ALTERATION OF SOLICITATION DOCUMENT: In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

ASSIGNMENT, TRANSFER AND SUBCONTRACTING: The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Mont. Code Ann. § 18-4-141.)

AUTHORITY: The following bid, request for proposal, limited solicitation, or contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

COMPLIANCE WITH LAWS: The contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the State Procurement Bureau. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the contractor's expense.

DEBARMENT: The contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

DISABILITY ACCOMMODATIONS: The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

FACSIMILE RESPONSES: Facsimile responses will be accepted for invitations for bids, small purchases or limited solicitations ONLY if they are completely received by the State Procurement Bureau prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

FAILURE TO HONOR BID/PROPOSAL: If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

FORCE MAJEURE: Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

HOLD HARMLESS/INDEMNIFICATION: The contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

LATE BIDS AND PROPOSALS: Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

PAYMENT TERM: All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All contractors may be required to provide banking information at the time of contract execution in order to facilitate State electronic funds transfer payments.

RECIPROCAL PREFERENCE: The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see http://www.discoveringmontana.com/doa/gsd/css/Resources/ReciprocalPreference.asp.

REFERENCE TO CONTRACT: The contract or purchase order number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract.

REGISTRATION WITH THE SECRETARY OF STATE: Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at http://www.sos.state.mt.us.

SEPARABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

SHIPPING: Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

SOLICITATION DOCUMENT EXAMINATION: Vendors shall promptly notify the State of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation document.

TAX EXEMPTION: The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED: Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

TERMINATION OF CONTRACT: Unless otherwise stated, the State may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.

UNAVAILABILITY OF FUNDING: The contracting agency, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313 (3).)

U.S. FUNDS: All prices and payments must be in U.S. dollars.

VENUE: This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

WARRANTIES: The contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.
